

AMENDED IN SENATE APRIL 23, 2009

AMENDED IN SENATE APRIL 1, 2009

**SENATE BILL**

**No. 492**

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**Introduced by Senator Maldonado**  
**(Coauthors: Senators Ashburn, Cogdill, Cox, and Runner)**  
*(Coauthor: Assembly Member Jeffries)*

February 26, 2009

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An act to amend Section 653b of the Penal Code, relating to loitering.

LEGISLATIVE COUNSEL'S DIGEST

SB 492, as amended, Maldonado. Loitering: criminal street gangs.

Under existing law, it is a misdemeanor for any person to loiter after being asked to leave, as specified, about any school or public place at or near which children attend or normally congregate. Existing law establishes enhanced misdemeanor penalties, *including minimum penalties*, for this crime if the person is required to register as a sex offender.

This bill would provide enhanced penalties for this crime if the person ~~has been previously convicted of, or had a petition sustained in juvenile court for~~, *is required to register with the chief of police or sheriff for committing* any of specified criminal street gang offenses. The bill would require the court, *if the court grants probation to a minor or adult in these circumstances*, to impose upon ~~these defendants the defendant or minor~~ a condition prohibiting the defendant *or minor* from entering the grounds of a school without the express permission of the chief administrative officer of the school. The bill would allow the court to excuse a defendant *or minor* from this condition under certain circumstances. Because the bill would increase the penalties for an existing crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 653b of the Penal Code is amended to  
2 read:

3 653b. (a) Except as provided in subdivision (b) or (c), every  
4 person who loiters about any school or public place at or near  
5 which children attend or normally congregate and who remains at  
6 any school or public place at or near which children attend or  
7 normally congregate, or who reenters or comes upon a school or  
8 place within 72 hours, after being asked to leave by the chief  
9 administrative official of that school or, in the absence of the chief  
10 administrative official, the person acting as the chief administrative  
11 official, or by a member of the security patrol of the school district  
12 who has been given authorization, in writing, by the chief  
13 administrative official of that school to act as his or her agent in  
14 performing this duty, or a city police officer, or sheriff or deputy  
15 sheriff, or Department of the California Highway Patrol peace  
16 officer is a vagrant, and is punishable by a fine of not exceeding  
17 one thousand dollars (\$1,000) or by imprisonment in ~~the a~~ county  
18 jail for not exceeding six months, or by both ~~the fine and the~~ *that*  
19 *fine and* imprisonment.

20 (b) Every person required to register as a sex offender who  
21 violates subdivision (a) shall be punished as follows:

22 (1) Upon a first conviction, by a fine not exceeding two thousand  
23 dollars (\$2,000), by imprisonment in a county jail for a period of  
24 not more than six months, or by both that fine and imprisonment.

25 (2) If the defendant has been previously convicted once of a  
26 violation of this section or former Section 653g, by imprisonment  
27 in a county jail for a period of not less than 10 days or more than  
28 six months, or by both imprisonment and a fine of not exceeding  
29 two thousand dollars (\$2,000), and shall not be released on

1 probation, parole, or any other basis until he or she has served at  
2 least 10 days.

3 (3) If the defendant has been previously convicted two or more  
4 times of a violation of this section or former Section 653g, by  
5 imprisonment in a county jail for a period of not less than 90 days  
6 or more than six months, or by both imprisonment and a fine of  
7 not exceeding two thousand dollars (\$2,000), and shall not be  
8 released on probation, parole, or any other basis until he or she  
9 has served at least 90 days.

10 (c) (1) Any person ~~described in subdivision (b) of~~ *required to*  
11 *register with the chief of police or sheriff pursuant to* Section  
12 186.30 who violates subdivision (a) shall be punished as follows:

13 (A) Upon first conviction, by a fine not exceeding one thousand  
14 dollars (\$1,000), by imprisonment in a county jail for a period of  
15 not more than one year, or by both that fine and imprisonment.

16 (B) Upon a second conviction, by a fine not exceeding two  
17 thousand dollars (\$2,000), by imprisonment in a county jail for a  
18 period of not more than one year, or by both that fine and  
19 imprisonment. The court shall consider a period of imprisonment  
20 of at least 10 days.

21 (C) If the defendant has been previously convicted two or more  
22 times, by a fine not exceeding two thousand dollars (\$2,000), by  
23 imprisonment in a county jail for a period of not more than one  
24 year, or by both that fine and imprisonment. The court shall  
25 consider a period of imprisonment of at least 90 days.

26 (2) If the court grants probation to a defendant who was  
27 convicted of, or ~~for a minor as to whom a petition was sustained~~  
28 ~~for, a violation of subdivision (a) and the defendant or minor is a~~  
29 ~~person described in subdivision (b) of~~ *required to register with*  
30 *the chief of police or sheriff pursuant to* Section 186.30, the court  
31 shall impose a condition prohibiting the defendant from entering  
32 the grounds of a school without the express permission of the chief  
33 administrative officer of the school. The court may excuse a  
34 defendant *or minor* from this condition in the unusual case in which  
35 the interests of justice warrant this excuse. The court shall state  
36 the reasons on the record for excusing a defendant *or minor* from  
37 this condition.

38 (d) As used in this section, “loiter” means to delay, to linger,  
39 or to idle about a school or public place without lawful business  
40 for being present.

1 (e) Nothing in this section shall preclude or prohibit prosecution  
2 under any other provision of law.

3 SEC. 2. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the only costs that may be incurred by a local agency or school  
6 district will be incurred because this act creates a new crime or  
7 infraction, eliminates a crime or infraction, or changes the penalty  
8 for a crime or infraction, within the meaning of Section 17556 of  
9 the Government Code, or changes the definition of a crime within  
10 the meaning of Section 6 of Article XIII B of the California  
11 Constitution.